COMMONWEALTH OF THE BAHAMAS CASE NO. CRI/BAIL/FP/00016/2011

IN THE SUPREME COURT

Criminal Side

B E T W E E N

DONOVAN COLLIE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Mrs. Eureka Coccia c/o Director of Public Prosecutions

Mr. K. Brian Hanna c/o Donovan Collie

Hearing Date: 18th November, 2025

RULING

FORBES, J

BACKGROUND

[1.] The Court heard the Application and indicated that Bail would be denied. However, it reserved its written ruling and now renders the same. The Applicant filed his application on the 8th October 2025, seeking the court's reconsideration of the bail question. In support of this application, the Applicant has filed an Affidavit on the 15th October 2025.

[2.] In the said Affidavit, the Applicant avers that he was remanded on the charges of Attempted Murder and Possession of a firearm with intent by means thereof to endanger life (4 Counts). He is the father of three young children, ages 16, 6, and 3. As their father, he is responsible for their financial and moral assistance. That he has always complied with the terms of any bail previously granted, nor has he interfered with any witnesses, nor will he commit any further offences while on bail.

[3.] The Court notes that the Applicant had previously applied in May 2023 and, in that instance, also filed an Affidavit in support on the 16th May 2023. The Applicant has now been served his Voluntary Bill of Indictment, and his trial is scheduled for 2nd November 2026. Although the issue was not raised by the Applicant, the Court takes note that the alleged incident occurred on the 7th March 2023. The Applicant was arraigned before the Magistrate on the 10th March 2023, served his VBI, and was arraigned on the 13th June 2023.

[4.] The Applicant applied for bail in June 2023, which was then denied on the 27th June 2023. He appeared before the Court of Appeal on 10th August 2023, and the Appeal was dismissed. The Applicant now reapplies to the Supreme Court in October 2025. The Court notes that the trial date is fixed, subject to unforeseen circumstances. There will be a question: should the trial not proceed in November 2026, whether the 3-year statutory period would require the Court to revisit bail.

[5.] On the 24th October 2025, the Respondent filed an Affidavit in Response and was sworn by R/Sargent 1087 Chester Walker, who avers that he is the Liaison Officer of the Director of Public Prosecutions and that the Applicant was charged on 30th December 2021 with Offences of Murder and Attempted Murder. The Applicant was arraigned before Magistrate Laquay Laing, along with another person, for the offences of Possession of an unlicensed firearm, Possession of Ammunition, and causing damage, and the charge sheet was exhibited. Bail was denied, and the Applicant was remanded. That the Applicant is a person of bad character. The Applicant confessed in a Record of an Interview that he fired a shot from a handgun after Jody. The Record of Interview is likewise exhibited. The five witnesses asserted that they were aware that the Applicant was the person who brandished a firearm, and their statements were exhibited. Magistrate Laing granted the Applicant bail, as the trial was scheduled to commence on the 12th June 2023.

[6.] The Applicant was subsequently convicted by Magistrate Laing on the 20th September 2023 and sentenced to 32 months and 1 year, respectively, to run concurrently, as it was shown that the Applicant had antecedents. The previous convictions related to Possession of Dangerous Drugs with intent to supply where the Applicant was convicted and sentenced on two (2) separate occasions first in December 2011 and was to serve one (1) year at BDOCS and again in December

2020 in which he was fined One Thousand two Hundred and Fifty Dollars ($1,250.00) on each count or one (1) year in default. The Applicant was also convicted and sentenced for causing harm on four (4) separate occasions, the first being in September 2005, when he was given a conditional discharge, to perform 30 hours of community service, and, in default, one (1) year at BDOCS. The second incident occurred when the Applicant was convicted and sentenced to twelve (12) years at BDCOS for Armed Robbery and Causing Harm, which occurred in July 2012. The third incident happened in November 2012, when he was convicted and sentenced to six (6) months at BDOCS. Given that the Applicant was to serve twelve (12) years, it is likely that he elected to address outstanding matters. Another incident occurred in July 2021, where the Applicant was ordered to pay Nine Hundred Dollars ($900.00) in compensation. And as previously noted, the final conviction was for Possession of Firearms and Ammunition.

SUBMISSIONS

[7.] The Applicant's Counsel has argued that the Applicant denied the allegations and maintains his innocence. Counsel for the Applicant further contends that the Applicant has conducted himself in a peaceful and non-confrontational manner, including his arrest and incarceration. He further argues that there is no evidence suggesting the Applicant poses a serious threat to society. In support, Counsel cites the Court of Appeal decisions of **Mendez and Ayo v. The Attorney General** SCCrApp & CAIS 93 & 99 of 2010 and **Duran Neely v. The Attorney General** SCCrApp. No. 29 of 2018. It is observed that Counsel for the Applicant failed to provide citations for either case and only laid over Neely's case. Nonetheless, the Court is thoroughly familiar with both authorities cited. Counsel for the Applicant paid specific reference to paragraphs 17 and 22 of the **Neely case** and the comments of *Justice of Appeal Evans*, where he noted the following:

> *"It should be noted* ***that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years****. In each case,* ***the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown.*** *As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section 4(2) (a), (b) and (c).* ***This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time, he can be admitted to bail as per (a) and (b).*** *In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail……"* & *"The authorities point, in my view, to a position that the primary purpose of the detention of an accused who is charged with an offence is to ensure his attendance at his trial. In the case of Attorney General v. Bradley Ferguson et al SCCrApp. No.'s 57, 106, 108, 116 of 2008 Osadebay JA observed as follows: - 11 "As stated by Coleridge J in Baronets' case cited earlier the defendant is not detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial."* ***It is accepted that in construing the Bail Act the Court can also take into consideration matters such as whether there is good reason to believe the accused would, if released, interfere with witnesses or that the detention is necessary for his own protection……****"*
>
> [Emphasis added.]

The essence of the Counsel for the Applicant's argument is that the Applicant is a fit and proper person for bail and should not be denied bail.

[8.] The Respondent's submission boiled down to that, given the antecedents of the Applicant, the Applicant is a danger to the general community, and also cites paragraph 19 in **Duran Neely *supra*,** which states as follows:

> *"I am aware that it is not the purpose of a bail hearing to determine the guilt or innocence of an accused. However, in a case where the appellant's submission is primarily that the case against him was very weak and not at all cogent, as was asserted by the respondent, it is important that a court*

hearing the application review the evidence available at the hearing. ***It is a well-accepted principle that the serious nature of a charge and the cogency of the evidence is a material consideration when determining the proper exercise of the discretion to grant bail****…"*

[Emphasis added.]

The Crown further argued that there are no conditions which would mitigate against the Applicant's conduct. Counsel for the Crown also sought to rely upon the comments of the Former President of the Court of Appeal in the case of **Cordero McDonald V. The Attorney General,** SCCrApp No. 195 of 2016, where Dame Allen said the following at paragraph 34***:***

"As this Court has said on many occasions, ***it is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences by the appellant****, such as to justify the deprivation of his liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail….."*

[Emphasis added.]

The substance of the Respondents' submissions is that the Applicant is of such a bad character and has allegedly committed such heinous acts that he ought not to be granted bail. The Court of Appeal in ***Davis*** cited **Vasyli v. The Attorney General** (2015) 1 BHS.J. No 86, where Allen P said: -

"12. On a true construction of section 4 (2) and paragraph (a) (i) of Part A of the Bail Act, and notwithstanding the 2014 Amendment, I am still of the view that ***bail may only be denied if the State is able to demonstrate that there are substantial grounds for believing that the applicant would not surrender to custody or appear for trial.*** *In assessing whether there are substantial grounds for such a belief, the court shall also have regard to the nature and seriousness of the offence and the nature and strength of the evidence against an applicant as prescribed in paragraph (g) of Part A."*

[Emphasis added.]

[9.] Taking the Respondent's case at its highest, it does not provide any evidence that the Applicant will not attend for his trial. Furthermore, the evidence provided is scant and underwhelming, and did not truly assist this court in arriving at the decision it was tasked with. The question is whether there has been any delay. This issue was not raised either by the Applicant or the Crown. The Court does note that the Applicant was arrested in March 2023, applied for bail in May 2023, and had a substantive hearing in June 2023. The question of delay does not therefore arise. The Court does take note of the comments, as cited in paragraph 7 of this ruling, made by *Justice of Appeal Evans* in the **Neely Case *supra*.**

[10.] There have been multiple decisions by the Court of Appeal of recent vintage, and not so recent, in which the criteria established what a Court ought to consider when the issue of bail is being reviewed. In the Court of Appeal decision of **Dennis Mather and the Director of Public Prosecution** SCCrApp 96 of 2020, the Court cited several cases as the starting point. ***"The main consideration for a court in a bail application is whether the applicant would appear for his trial."*** In **Attorney General v. Bradley Ferguson, et al** SCCrApp. No. 57, 106, 108, 116 of 2008, *Osadebay, JA* observed as follows**:**

> *"As stated by Coleridge J in Baronets' case cited earlier,* ***the defendant is not detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial."***
>
> [Emphasis added.]

In **Jonathan Armbrister v The Attorney General** SCCrApp. No.145 of 2011*, John, JA* said as follows:

> *"12. It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the*

defendant will appear to take his trial, and that bail is not to be withheld merely as punishment. The courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any, and the likelihood of interference with witnesses."

LAW

[11.] The Court must now consider the rationale for the Applicant's denial of bail and whether the Applicant will refuse or fail to surrender for trial. Additionally, it appears that the Respondent argues that the Applicant's antecedents, that he has pending matters, and that the evidence adduced is cogent and powerful, should all be grounds to deny the Applicant's bail. The Applicant faces charges of Attempted Murder, Possession of a Firearm with Intent by means thereof to Endanger life; these charges are reflected in Part C of the First Schedule of the Bail Act.

[12.] 10. Section 4(2) and (3) of the Bail (Amendment) Act, 2011 permits the grant of bail to those charged with a Part C offence:

"(2) Notwithstanding any other provision of this Act or any other law, any person charged with an offence mentioned in Part C of the First schedule, shall not be: granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged - -

(a) has not been tried within a reasonable time;

*(b**) **is unlikely to be tried within a reasonable time**; or*

(c) should be granted bail having regard to all the relevant factors, including those specified in Part A of the First Schedule and subsection (2B),

And where the court makes an order for the release, on bail, of that person, it shall include in the record a written statement giving the reasons for the order of the release on bail.

(2A) For the purpose of subsection (2) (a) and (b) ---

(a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;

(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.

(2B) For the purpose of subsection (2) (c), in deciding whether or not to grant bail to a person charged with an offence mentioned in Part C of the First Schedule, the character or antecedents of the person accused, the need to protect the safety of the public or public order and, where appropriate the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.

(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal. (JA) Notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule.

In addition to Part A, judges hearing a bail application for a Part C offence shall have regard to the following factors—

(*a) whether there are substantial grounds for believing that the defendant, if released on bail, would-*

(i) fail to surrender to custody or appear at his trial;
(ii) commit an offence while on bail; or
(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

(b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;
(c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
(d) whether there is sufficient information for the purposes of taking the decisions required by this Part or otherwise by this Act;

(c) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
(f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;
(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."; offence must exercise their discretion to issues such as character and antecedents, the need to protect the safety of the public or public order and also to consider the need to protect the safety of the victim of the alleged offence or for his own protection as well the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

ANYALSIS & DISCUSSION

[13.] Thus, the issue to be determined is whether the Applicant would surrender for trial. The Respondent offers no evidence to suggest that the Applicant would not, in fact, surrender. The Affidavit is entirely devoid of any evidence that the Applicant might fail to surrender for trial. They, however, focused on the Applicant's Antecedents, which were referenced earlier. And the only ones that might give the court pause are the 2012 conviction and sentence for Armed Robbery. Those for Possession of a Firearm and ammunition, as they demonstrate the Applicant's ability to obtain offensive weapons and a lack of self-awareness after serving 12 years and 32 months, and the individual continues to engage in at best reckless conduct. The Court fully notes that the Applicant also has convictions for Possession of dangerous Drugs, Possession of dangerous Drugs with Intent to supply, as well as multiple convictions for causing harm. These all evidence a sense of entailment and lawlessness with a propensity towards violence. Here, the Applicant engaged in violence against the person. However, this incident occurred in 2012. The Crown also emphasizes that, given the previous incidents, the Applicant poses a threat to society. It might be inferred that, given the antecedents and given the very cogent

evidence and the statement against interest made by the Applicant. There are specific cautions to observe. Firstly, the statement may very well be challenged pursuant to section 20 of the Evidence Act, Chapter 65 of the Statute Laws of the Bahamas, which reads accordingly:

> *"(1) In any proceedings, a confession made by an accused person may be given in evidence against him in so far as it is relevant to any fact in issue in the proceedings and is not excluded by the court in pursuance of this section.*
> *(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession —*
> *(a) was or may have been obtained by oppression of the person who made it; or*
> *(b) is rendered unreliable by reason of anything said or done or omitted to be said or done in the circumstances existing at the time, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.*
> *(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).*
> *(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence of any facts discovered as a result of the confession and of so much of the confession as relates thereto.*
> *(5) In this Act, "confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not, and whether made in words or otherwise; "oppression" includes torture, inhuman or degrading treatment, and the use of threat of violence (whether or not amounting to torture)."*

[14.] It may be that the statement is challenged on admissibility grounds. Although it might be challenged, there are admissions in which the Applicant admits to producing a firearm and firing a single shot while in the company of two (2) females in a gas station. The Court takes note of the comments of the Court of Appeal in **The**

Attorney General v. Bradley Ferguson et al 57, 106,108,116 of 2008, and particular paragraph 35, which reads in part as follows:

> *"That is not to suggest that every judge must embark on a minute examination of the evidence against an accused on a bail application. That would not be proper (see Hurnam). But whereas here no evidence is adduced linking the respondents to the crimes charged at a hearing where that issue is live, it seems to me that to give the accused the full measure of his rights under article 19 of the constitution there is an obligation to release him immediately, and leave it to the court hearing the case preliminarily or otherwise to decide whether in fact there is evidence to support the charge. In Hurnam release on bail was thought proper in circumstances where the evidence against the accused was comprised of accomplice evidence and had to be approached with caution. The court thought the presumption of innocence in those circumstances operated to justify immediate release pending trial."*

[15.] In this case, there are strong eyewitnesses to the shooting, such as the gas station attendant, and some other witnesses with flaws, but those are issues for a jury to determine. There is also the Applicant's admission, subject to its challenge, so, unlike Ferguson's case, there is strong, very cogent evidence. The second issue is the statements of the particular witnesses. In the case of Mithu Smith, he reports interceding in an altercation between the Applicant and the Virtual Complainant. It was alleged that the Virtual Complainant was observed with the Applicant's girlfriend. That, according to the witness, he organized a sit-down where the Virtual Complainant, who was to be compensated for injuries allegedly inflicted by the Applicant, was to be compensated with a certain amount of Marijuana. According to the witnesses, he was later contacted by the Virtual Complainant, who advised that the Applicant had fulfilled his commitment. Although the commitment was only partial, the Applicant then allegedly fired upon them. According to a witness, when he was in the company of others. That he, along with the others, would have headed to the Police Station to report the incident where they met the Applicant. The

Applicant and another person got into a Physical altercation, resulting in all of them being arrested.

[16.] The Court takes note of the comments of the Court of Appeal in **Stephon Davis v. The Director of Public Prosecutions** SCCrApp No. 108 of 2021, notably, the statements made in paragraphs 19 and 35 by the *Justice of Appeal Evans* and *President of Appeal Sir Michael Barnett*, respectively, where the Court held as follows:

> *"19. A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offence is alleged to have been committed while the defendant was already on bail for a similar offence. There is a requirement for the judge to assess the evidence on which the Crown intends to rely on the hearing of the new charge. We must recognize that every individual charged before the Court is presumed innocent until proven guilty. We walk a tight rope of having to protect the interests of society and the constitutional rights of individuals brought before the Courts. This system only works if all stakeholders do their part. As such, the Crown is not at liberty to hold information to its bosom and not provide the Courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity……*
> *35. This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to show why there are good reasons to deny bail to a person charged with an offence."*

[17.] The final issues raised were the seriousness of the offense and the cogency of the evidence. In this regard, this Court will note the statement of the Court of Appeal in **Davis *supra,*** where in the headnote the court said as follows: -

> *"No substantial grounds have been disclosed in this case to support a conclusion that the appellant would abscond and not appear for trial. As stated in Hurnam "the seriousness of the crime alleged and the severity of the*

sentence faced are not, without more, compelling grounds for inferring a risk of flight ..." it follows that there must be shown, substantial grounds for believing that the applicant would not surrender to custody or appear for trial. There is no evidence to suggest that the appellant would not appear for his trial. The Judge is required to consider whether there are conditions that may be imposed that would, as far as possible, ensure that the appellant appears for his trial. It is only the severity of the charge and the inference of flight in the instance where no form of bail condition could mitigate or minimize that flight that can support the Judge's refusal of bail."

[18.] As stated in the **Davis *supra***, there is no evidence before this Court that the Applicant will refuse to surrender for trial. There is, however, robust and cogent evidence, and the offence is serious. Therefore, the court must consider whether it can impose any conditions to prevent further criminal incidents. It is further noted from the statement of the Applicant that he knew one of the Virtual Complainants before.

[19.] As previously stated, the offence of Attempted Murder is a serious offence, one that carries a possible penalty of life imprisonment. The seriousness of such a case may give cause for any defendant to abscond if released on bail. The Court's role, as stated above, is not to act as a fact-finder or a seeker of the truth at this stage. Instead, the Court must weigh the Applicant's presumption of innocence and right to liberty against the public's safety and order. The Court does not intend to rehash its previous ruling, save to note that the previously advanced evidence hasn't changed. This Court will be the first to acknowledge that Court dates can be elusive, as circumstances are beyond the Court's control. Still, barring any unforeseen circumstances, this case will proceed to trial.

[20.] The Court notes the Court of Appeal's comments in **Damargio Whyms v. The Director of Public Prosecutions** SCCrApp. No. 148 of 2019, specifically at paragraphs 17 to 21, which are as follows:

> "17. In October of 2016, however, **the practice of judges denying bail solely on the basis that the applicant has demonstrated "no change of circumstances" since the last application was expressly disapproved by this Court (differently constituted) as being incompatible with the Bahamian constitutional framework and the existing statutory regime for bail.**
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> 18. In **Michael Mackey and Edward Johnson v. Regina** SCCrApp. Nos. 288 & 289 of 2015, this Court (differently constituted) had occasion to examine the applicability in this jurisdiction of the practice of denying a successive or repeat bail application simply because "no change of circumstances" is shown to have occurred since the previous refusal of bail.
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> 19. In **Mackey**, a majority of the Court expressly disapproved the adoption of the use of the practice in this jurisdiction. The majority (Isaacs and Crane-Scott JJA) determined that having regard to Articles 19(1)(d) and 20 of the Constitution and the provisions of the Bail Act, Ch. 103 (as amended), nothing (and no judge) can prevent a person who has made a previous unsuccessful application for bail from making successive and repeated applications to secure his release on bail. **What is more, the Court unanimously held that when a subsequent bail application is made following a previous refusal of bail, the judge hearing the subsequent application is duty-bound to consider the application afresh and on its merits.**
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> 20. In his separate opinion in **Mackey**, Isaacs JA explained the reasons why the English practice is unworkable within the Bahamian constitutional framework, given the guarantees of personal liberty and the right to a fair hearing within a reasonable time. He put the matter as follows:
>
> > **"57. Articles 19 and 20 provide that a person may only be detained if the law authorises it, and he is presumed innocent unless he pleads guilty or until it is determined otherwise after a trial. It is clear that <u>no policy created by a magistrate or judge can override a person's undoubted ability to apply for bail as often as he wishes or his right to have that application fully considered</u>." [Emphasis added]**
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> 21. In a similar vein, Crane-Scott JA also rejected the applicability in this jurisdiction of any practice or policy (such as that employed in English courts) which restricts an applicant for bail from making successive and repeated

applications to be considered for bail unless a "change in circumstances" can be demonstrated. In her separate opinion in Mackey, Crane Scott JA explained:

> **"67. … (given our Constitutional arrangements), I am of the view that no policy created by a magistrate or judge (nor, I would add, any policy created by English courts such as described in Nottingham Justices or Slough Justices) can lawfully restrict a person's right as authorized by the Constitution and the Bail Act, to apply to the courts for bail as often as he or she wishes or to have that application considered on its merits.**
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> **68. <u>… each judge has the duty to consider afresh each application for bail on its merits and considerations (advocated in the English authorities) such as whether there has been a "material change in circumstances" since the earlier application have no place in our current bail regime.</u>**
>
> **69. The language employed by the learned Judge in each of these appeals is perhaps unfortunate in that it tends to give the impression that she could have erroneously had in mind the prevailing policy behind the English common law authorities mentioned above**."
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> [Emphasis added]

[21.] The allegations, as stated above, against the Applicant are serious; moreover, there is no evidence before the Court that the witnesses who implicate him have recanted their statements or that their statements have changed dramatically from when they were first given. Additionally, I have found that the *prima facie* evidence against the Applicant is strong. Further, the alleged actions of the Applicant on that night, i.e., shooting a gun in a commercial area within the location of gasoline, which is highly flammable and potentially explosive, demonstrated a blatant disregard for public safety. The Court thus has reason to believe that the Applicant has a wanton disregard for human life.

[22.] The Court is prepared to consider whether a stringent condition, if imposed, would prevent any further incidents. Those conditions are to be considered to determine whether the imposition of electric monitoring devices (EMD) or curfew conditions would suffice.

[23.] In the view of the Court, given what clearly is a reckless act, and if the evidence of one of the witnesses can reasonably be believed, it suggests that the Applicant engages in multiple criminal activities and is an ongoing danger to this community. After spending twelve (12) years in prison for Armed Robbery, namely the stealing of property without the owner's consent in an aggravated manner while armed with an Offensive Instrument, he has not had a sobering disposition.

[24.] The Applicant has multiple convictions for Possession with the intent to supply. And here again, if Mr. Smith's statement is to be believed, the Applicant provided drugs to one of the Virtual Complainants to compensate that complainant for a previous attack which had resulted in severe injuries. This was a knife attack, according to Mr. Smith, perpetrated by the Applicant, which went unreported. This Court finds that the measures permitted are unlikely to restrain this Applicant. This Court reminds itself of the comments made by the Court of Appeal in **Tyreke Mallory v Director of Public Prosecutions** SCCrApp. No. 142 of 2021 Justice of Appeal Evans noted as follows at paragraph 25:

> *"In my view, having regard to his antecedents and the fact that he was arrested for the current offence while on bail, there is a reasonable basis to perceive him as a threat to society. Further, the evidence, in my view, raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge, and detention pending trial…"*

DISPOSITION

[25.] Therefore, in weighing the presumption of innocence given to the Applicant with the need to protect the public order and the public safety, the Court is of the view that the need for public safety and public order is of highest importance and, in the present circumstances, cannot be ignored. In the circumstances, the Court will not accede to this Application for bail at this time, as it finds the Applicant to be a threat to society, for which no conditions can be placed, that in the Court's mind, would quell this concern.

[26.] Parties aggrieved may appeal to the Court of Appeal.

Dated this 3rd day of February, A.D.2026

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The Honorable Justice Andrew Forbes